



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor  
John H. Tippetts, Director

June 6, 2018

Dave Kuisti  
Idaho Transportation Department  
2600 Frontage Road  
Lewiston, ID 83501

Subject: FINAL 401 Water Quality Certification for NWW-2018-159, ITD State Highway 6 and 9 turn-bay, Palouse Rive River.

Dear Mr. Kuisti:

Section 401 of the Clean Water Act requires that states issue certifications for activities which are authorized by a federal permit and which may result in the discharge to surface waters. In Idaho, the DEQ is responsible for reviewing these activities and evaluating whether the activity will comply with Idaho's Water Quality Standards, including any applicable water quality management plans (e.g., total maximum daily loads). A federal discharge permit cannot be issued until DEQ has provided certification or waived certification either expressively, or by taking no action.

This letter is to inform you that DEQ has evaluated the information submitted to us by the U.S. Army Corps of Engineers and is issuing the attached 401 certification, subject to the terms and conditions contained therein. This certification shall remain in effect until 2 years from issuance, at which time construction must be completed.

Please contact me at 208-799-4370 if you have any questions or further information to submit to DEQ.

Sincerely,

A handwritten signature in black ink that reads "John Cardwell".

John Cardwell  
Regional Administrator  
Lewiston Regional Office

c: Shane Slate, ACOE Project Manager  
Shawn Smith, ITD  
Loren Moore, DEQ State Office  
Sujata Connell, DEQ LRO



## Idaho Department of Environmental Quality Final §401 Water Quality Certification

June 6, 2018

**404 Permit Application Number:** NWW-2018-159, ITD State Highway 6 and 9 turn-bay, Palouse River

**Applicant/Authorized Agent:** Idaho Transportation Department

**Project Location:** N 46.91831, W -116.73976

**Receiving Water Body:** Palouse River

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Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the joint application for permit, received on April 2, 2018, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

### Project Description

This project will take place at the intersection of State Highway 6 and State Highway 9 near Harvard, Idaho. A roadway turn-bay will be constructed in the westbound lane and a right turn lane will be constructed in the eastbound lane. These modifications will improve roadway safety. The project will replace two cross drain culverts that drain stormwater. Two ditch fills will permanently fill 0.04 total acres of wetlands with gravel, rock or stone. Less than 400 cubic yards of fill material will be discharged below the ordinary high water mark. The Palouse River will not be directly impacted, although ephemeral overland flow and stormwater runoff at this site is carried in a southwesterly direction toward the Palouse River through a series of stormwater ditches and culverts. Project plans indicate best management practices (BMPs) will be in place to reduce impacts to the Palouse River.

## Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

### ***Pollutants of Concern***

The primary pollutant of concern for this project is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

### ***Receiving Water Body Level of Protection***

This project is located adjacent to the Palouse River within the Palouse Subbasin assessment unit (AU) ID17060108CL016\_04 (Palouse River – Strychnine Creek to Hatter Creek). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

According to DEQ's 2014 Integrated Report, this receiving water body AU is fully supporting its cold water beneficial uses (IDAPA 58.01.02.052.05.a). Salmonid spawning and primary contact recreation beneficial uses are not assessed at this time; however, the applicant has agreed to assume that this waterbody is high quality for the unassessed uses (phone conversation applicant

3/23/18). As such, DEQ will provide Tier II protection in addition to Tier I for this water body (IDAPA 58.01.02.051.02; 58.01.02.051.01).

### ***Protection and Maintenance of Existing Uses (Tier I Protection)***

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses.

During the construction phase, the applicant will implement, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, that will minimize or prevent future sediment contributions from the project area. As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain designated and existing beneficial uses.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

### ***High-Quality Waters (Tier II Protection)***

The Palouse River is considered high quality for the cold water aquatic life, salmonid spawning, and primary contact recreation beneficial uses. As such, the water quality relevant to these uses must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to the cold water aquatic life, salmonid spawning, and primary contact recreation beneficial uses of the Palouse River (IDAPA 58.01.02.052.06). The only pollutant of concern for this project is sediment. Sediment is not relevant to contact recreational uses; therefore, this project will not result in a lowering of water quality with respect to recreational uses. Sediment is relevant to the cold water aquatic life and salmonid spawning beneficial uses. A wetland delineation conducted for ITD in August 2017 determined the Palouse River will not be directly affected by the proposed project. At the project site 0.04 acres of wetlands will be permanently impacted. The permittee must minimize the transport of sediment through implementation of BMPs including sediment retention, a spill prevention plan, weather restrictions for cement work, and limitations for equipment refueling, staging and storage. An EPA approved Storm Water Pollution Prevention Plan will be implemented on site prior to construction. As such, the project complies with IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06.

In order to maintain the ambient water quality conditions, permanent erosion and sediment controls must be implemented which will minimize or prevent future sediment contributions from the project area. The provisions in the 404 permit, coupled with the conditions of this certification, ensure that degradation to the Palouse River will not occur. Therefore, DEQ concludes that this project complies with the Tier II provisions of Idaho's WQS (IDAPA 58.01.02.051.02; 58.01.02.052.06 and 58.01.02.052.08).

## **Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law**

### ***General Conditions***

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.
5. If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the state, coverage under the EPA Stormwater Construction General Permit *must* be obtained. More information can be found at <https://www.epa.gov/npdes-permits/stormwater-discharges-construction-activities-region-10>.

### ***Fill Material***

1. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.
2. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
3. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

### ***Erosion and Sediment Control***

1. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at <http://www.deq.idaho.gov/media/494058-entire.pdf>. Other resources may also be used for selecting appropriate BMPs.
2. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
3. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
4. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
5. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
6. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
7. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces.

### ***Pollutants/Toxics***

1. The use of chemicals such as soil stabilizers, dust palliatives, sterilants, growth inhibitors, fertilizers, and deicing salts during construction and operation should be limited to the best estimate of optimum application rates. All reasonable measures shall be taken to avoid excess application and introduction of chemicals into waters of the state.

### ***Vegetation Protection and Restoration***

1. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
2. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
3. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

### ***Management of Hazardous or Deleterious Materials***

1. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
2. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
3. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
4. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
  - a. Make every reasonable effort to abate and stop a continuing spill.
  - b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
  - c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802).
    - Lewiston Regional Office: 208-799-4370 / 877-541-3304
  - d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

### ***Culverts***

1. To prevent road surface and culvert bedding material from entering a stream, culvert crossings must include best management practices to retain road base and culvert bedding material. Examples of best management practices include, but are not limited to, parapets, wing walls, inlet and outlet rock armoring, compaction, suitable bedding material, anti-seep barriers such as bentonite clay, or other acceptable roadway retention systems.
2. The culvert shall not constrict the stream channel and shall not be angled such that the outflow is directed toward the stream bank. The culvert's flow line shall match the existing stream invert at its entrance and exit. Adequate grade control shall be installed to prevent channel down cutting or excessive deposition from occurring.
3. The culvert shall be installed such that it does not impede fish passage.
4. The culvert outflow shall be armored with riprap to provide erosion control. This riprap will be clean, angular, dense rock that is free of fines and resistant to aquatic decomposition.
5. Culverts shall be sized appropriately to maintain the natural drainage patterns.

## Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Mark Sellet at (208)799-4370 or email at [mark.sellet@deq.idaho.gov](mailto:mark.sellet@deq.idaho.gov).



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John Cardwell

Regional Administration

Lewiston Regional Office